IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 5 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF GIFT TAX

Versus

GIRA SARABHAI

Appearance:

1. GIFT TAX REFERENCE No. 5 of 1988
MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1
MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 25/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Mr BB Naik, learned counsel for the revenue

requests that this Bench may please take up this reference for disposal, as the controversy raised herein is squarely covered by the decision of this Court in Gift-tax Reference No. 2 of 1986 and also because the reference has been pending for the last about 14 years, notwithstanding the fact that one of us (D.A. Mehta, J.) had appeared for the assessee at the hearing of the reference application before the Tribunal.

2. In this reference in all four questions are referred for the opinion of this Court in respect of assessment year 1977-78. The first three questions are at the instance of the assessee and the last question is at the instance of the revenue. The questions at the instance of the assessee are as under :-

"(1) Whether, on the facts and in the circumstances of the case, exercise of power of appointment by the assessee was a transfer of the assessee's interest in the property under section 2(xxiv)(c) of the Gift-tax Act making the assessee liable to tax under the Gift-tax Act ?

(2) If the answer to question No. 1 is in the affirmative whether the assessee by exercising the power of appointment regarding his interest in the property and naming the persons to whom the trustees of the original trust should transfer the property at a future date became liable to gift-tax in this assessment year ?

(3) Whether the expression `in such manner' in clause (1)(iii) of the Trust deed did not empower the trustees to make direct transfer of appointee trusts ? If it did so empower, whether there had been such a direct transfer for which no tax is leviable as it had already been paid at the time of the transfer ?"

3. Mr BB Naik, learned counsel for the revenue and Mr RK Patel, learned counsel for the respondent-assessee state that the controversy raised in these three questions has already been concluded in favour of the revenue as per the decision of this Court in Gift-tax Reference No. 2 of 1986 .

Accordingly we hold that exercise of power of

appointment by the assessee was a transfer of the assessee's interest in the property under Section 2(xxiv)(c) of the Gift Tax Act, 1958. We are also of the view that by exercising the power of appointment in the year in question, though such transfer was to take effect on a future date, the assessee was liable to gift-tax in this assessment year. We are also of the view that the exercise of the power of appointment in the instant case did amount to a transfer which was exigible to gift-tax notwithstanding the fact whether any gift-tax was paid earlier at the time of settlement of the trust.

Accordingly our answer to all the three questions referred at the instance of the assessee is in favour of the revenue and against the assessee.

4. Coming to the last question referred at the instance of the revenue, the same reads as under :-

"Whether the Appellate Tribunal has been right in law in holding that the G.T.O. was not justified in levying gift-tax on the value of the entire corpus on the ground that it was only the assessee's interest in the property which was transferred and it was that which was required to be considered for the purpose of gift-tax ?"

The learned counsel for the parties agree that this controversy has also been concluded by the aforesaid decision of this Court in Gift-tax Reference No. 2 of 1986 in favour of the assessee.

Accordingly our answer to this question is in the affirmative i.e. in favour of the assessee and against the revenue.

5. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-